



**IN THE MATTER OF THE FINANCIAL INSTITUTIONS ACT
R.S.B.C. 1996, C. 141**

and

BRIDGEPOINT INDEMNITY COMPANY (CANADA) INC.

**ORDERS
UNDER SECTIONS 244(2) AND 238**

**NOTICE OF RIGHT OF HEARING OR APPEAL
UNDER SECTIONS 238(2) AND 242**

UPON REVIEWING THE SUBMISSIONS AND EXHIBITS OF STAFF, I make the following findings and orders:

1. In December 2015, it came to staff's attention that Bridgepoint Indemnity Company (Canada) Inc. (BICO) may be offering legal expenses insurance in British Columbia, as well as other jurisdictions, and that BICO is not authorized to issue and offer any form of insurance in British Columbia or other jurisdictions.
2. The Ontario courts have referred to BICO's legal costs protection products as insurance in the following cases: *Markovic v. Richards*, 2015 ONSC 6983, *Alary v. Brown*, 2015 ONSC 3021, *Stamp v. Sun Life Assurance Co. of Canada*, 2015 ONSC 2858, and *Shaw v. Loblaw Companies Ltd.*, 2015 ONSC 5987.
3. On January 4, 2016, BICO, through legal counsel, wrote to this office regarding its products. BICO did not state that its products were not insurance. BICO did not discuss whether any insurer exemption would apply in British Columbia. BICO states in part:
 - (a) The legal cost protection (LCP) products "LegalProtect" and "Trial Protect" are designed to provide coverage for adverse costs and disbursement costs. There are no upfront costs for clients to acquire BICO products in advance. Clients only pay when a claim is successfully resolved by settlement or in court.

**Superintendent of
Financial Institutions**

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- (b) It enables plaintiffs to proceed with their claims with the knowledge that adverse cost and disbursements will be funded by BICO.
 - (c) BICO argues that its products are designed to allow plaintiffs with limited financial resources to protect themselves against legal expenses. BICO enhances individual access to justice, as plaintiffs without the protection of BICO's products may choose to enter into a settlement at a disadvantage.
 - (d) BICO compares its operation to the Class Proceedings Fund, which is a legislatively mandated fund operating in Ontario, established by the *Law Society Act* (Ontario). The Class Proceedings Fund is not a licensed insurance company because it is exempt from authorization in that jurisdiction, for class action proceedings.
4. A review of the BICO website shows the following:
- (a) There are two types of protection offered:
 - i. Adverse cost protection which covers costs a plaintiff owes to the defendant through a costs award; and
 - ii. Legal disbursements protection which covers reasonable disbursements and costs owing to a plaintiff's own counsel where the plaintiff's award is insufficient.
 - (b) Coverage is available to both law firms and individual consumers.
 - (c) Fees for BICO legal cost protection are a percentage of the amount of protection a client decides to purchase. The amount of the fee charged depends on the type of civil claim being pursued, as well as the current stage of litigation of the claim.
 - (d) BICO states that its product is "unobstructed by the laws governing the marketing and distribution of insurance."
 - (e) John Rossos, Chairman and CEO, established BICO in 2013.
5. BICO has never registered with the British Columbia corporate registry to do business in British Columbia. BICO is an Ontario incorporated company. BICO has not applied, and is not authorized, to conduct insurance business in British Columbia.
6. Staff referred me to a blog where a British Columbia lawyer arranged for BICO coverage when assisting [REDACTED] with the management of litigation involving a minor plaintiff.
7. From information and records obtained from [REDACTED] the following was discovered:
- (a) [REDACTED] was appointed litigation guardian for a minor. The minor's legal counsel introduced BICO to [REDACTED] in 2014.
 - (b) Both the plaintiff and the legal counsel, with approval of [REDACTED] as guardian, signed the indemnity agreement with BICO, which sets out the terms of the agreement.
 - (c) The product purchased was LCP, and the heading on the document states "Legal Cost Protection Certificate of Indemnity".
 - (d) The coverage purchased for adverse cost protection was \$100,000 should the trial not go as planned.

- (e) The premium was 7.5 per cent of the total indemnity amount, plus applicable taxes.
 - (f) ██████████ counsel stated to staff that he believed it was a form of insurance as it provided an indemnity against a loss that may occur.
8. The LCP Certificate of Indemnity provided in that case identifies Rossos as the Chief Executive Officer who has the authority to bind the corporation, with a business address at Suite 201, 133 Richmond Street West, Toronto, ON, M5H 2L3, and it states in part:
- (a) BICO will:
 - i. “Agree to provide the Legal Cost Protection as set out in this Certificate of Indemnity as of Commencement Date.”; and
 - ii. “Pay an Adverse Cost Award made by the Court within 7 business days of the Claim Approval Date.”
 - (b) “Underwriting and claims administration ... will require your personal information to be transferred outside of Canada to Barbados for administering.”
9. On March 21, 2016, a member of staff, using a pseudonym, made an email inquiry to BICO asking if she could obtain more information and specifically stating that she is interested in purchasing BICO’s insurance policy. BICO provided staff with a summary of its product and an information package.
10. Further pretext inquiries with BICO resulted in the following exchange:
- (a) Staff asked “My friend told me I can buy insurance from you that will cover the legal cost...are you an insurance company? I am in British Columbia will you insure me? Do you have a rep in British Columbia that I can contact?”
 - (b) BICO stated that they would have ██████████ contact staff.
 - (c) Ms. ██████████ stated that she is “the British Columbia representative for LCP” and explained to staff that LCP “provides you with protection against an adverse cost award and/or payment of your lawyer’s disbursement in the event of an unsuccessful claim.”
 - (d) Ms. ██████████ invited staff to call her at 604-██████████. 604 is a British Columbia area code.
11. Staff found Ms. ██████████’s LinkedIn page where it states she is a paralegal. ██████████ says on her page that she has worked for Bridgepoint Financial Services Inc. since 2014 as a legal assessment specialist and is located in White Rock, British Columbia and teaches at a college in the Lower Mainland. Her signature on her email refers to Bridgepoint Financial Services Inc. and the 133 Richmond Street West, Suite 201 Toronto address.
12. BICO placed an advertisement in the May 2016 edition of the “Advocate” magazine, which is published and distributed in British Columbia by the Vancouver Bar Association. In that advertisement BICO claims its “legal cost protection [can be] tailored for your law firm”.

Relevant Legislation

13. Section 1(1) of the *Financial Institutions Act* (the *Act*) defines insurance business:

“insurance business” means

- (a) undertaking or offering to undertake to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed,*
- (b) soliciting or accepting any risk,*
- (c) soliciting an application for a contract of insurance,*
- (d) issuing or delivering a*
 - (i) receipt for any contract of insurance, or*
 - (ii) contract of insurance,*
- (e) in consideration of any premium or payment, granting an annuity on a life or lives,*
- (f) collecting or receiving any premium for a contract of insurance,*
- (g) adjusting any loss covered by a contract of insurance, or*
- (h) advertising for any business described in paragraphs (a) to (g),*

whether or not the person undertaking an activity or activities set out in paragraphs (a) to (h) can or does distribute any gain, profit or dividend, or otherwise disposes of the person's assets, to a member or shareholder of the person other than during winding up or on dissolution;

14. Section 1(5) of the *Act* provides that where the risk covered by the insurance is located in BC, the activity referred to in the definition of insurance business is deemed to be activity in BC:

1(5) An activity referred to in paragraph (a) of the definition of "insurance business" in subsection (1), whether or not the activity is conducted in British Columbia, is conclusively deemed for the purposes of this Act to constitute the carrying on of insurance business in British Columbia if the risk or peril is located in British Columbia.

15. Section 1(1) of *Classes of Insurance Regulation* defines legal expenses insurance as:

"legal expenses insurance" means insurance against costs incurred for legal services specified in the policy, including any retainer and fees incurred for the services, and other costs incurred in respect of the provision of the services;

16. Section 1 of the *Insurance Act* (IA) defines “insurance” and “contract”:

1 In this Act:

...

"contract" means a contract of insurance and includes a policy, certificate, interim receipt, renewal receipt or writing evidencing the contract, whether sealed or not, and a binding oral agreement;

...

"insurance" means the undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value on the happening of a certain event;

17. Section 2 of the IA applies the IA to all contracts of insurance made or deemed to be made in BC:

2 (1) This Act, except as provided under an enactment, applies to every contract of insurance made or deemed made in British Columbia.

18. Section 75 of the Act prohibits unauthorized insurance business:

75 A person must not carry on insurance business in British Columbia unless the person is

- (a) an insurance company or extraprovincial insurance corporation that has a business authorization to carry on insurance business,*
- (b) a company registered under the Insurance (Captive Company) Act,*
- (c) a member of a reciprocal exchange as defined in Section 186 for which a permit under Section 187 has been issued and is in effect,*
- (d) licensed under Division 2 of Part 6 as an insurance agent, insurance salesperson, insurance adjuster or employed insurance adjuster and is carrying on the insurance business only in that capacity,*
- (e) the deposit insurance corporation, the Canada Deposit Insurance Corporation or the Insurance Corporation of British Columbia,*
- (f) an insurer*
 - (i) [Repealed 2004-48-48.]*
 - (ii) that administers an insurance compensation plan designated by regulation for the purpose of Section 66 (2),*
- (g) a society described in Section 193 (1) (a) to (g) that, immediately before September 15, 1990, was carrying on the business of insurance,*
- (h) a credit union that is carrying on insurance business only by making or participating in contracts of insurance as permitted by Section 82 of the Credit Union Incorporation Act, or (i) a central credit union that is carrying on insurance business only by providing or arranging insurance as permitted by Section 90 (2) of the Credit Union Incorporation Act.*

19. Section 244 of the *Act* grants the commission (or superintendent by delegation) the authority to order compliance:

244 (1) In this Section, "committing an act or pursuing a course of conduct" includes failing or neglecting to perform an act or failing or neglecting to pursue a course of conduct.

(2) If, in the opinion of the commission, a person is committing an act or pursuing a course of conduct that

(a) does not comply with this Act or the regulations,

...

then, the commission [superintendent by delegation] may

(f) order the person to

(i) cease doing the act,

(ii) cease pursuing the course of conduct, or

(iii) do anything that the commission considers to be necessary to remedy the situation,

...

20. Section 238 of the *Act* provides a summary procedure for issuing immediate orders:

238 (1) If the superintendent acting in accordance with a delegation by the commission, or the council, depending on which of them has the power to make the order,

(a) intends to make an order under Section 48 (2), 93 (1) or (2), 99 (2), 144 (3), 231 (1) (g), (h), (i) or (j), 244 (2) or (5), 245 (1), 275 or 277 (d) to (f), and

(b) considers that the length of time that would be required to hold a hearing would be detrimental to the due administration of this Act, then, despite Section 237, the superintendent or council, as applicable, may make the intended order without giving a person directly affected by it an opportunity to be heard, but the superintendent or council, as soon as practicable after making the order, must deliver to that person

(c) a copy of the order and written reasons for it, and

(d) written notice of the person's rights under subsection (2).

(2) A person directly affected by an order made under subsection (1) may, within 14 days of receiving a copy of the order,

(a) require a hearing before the superintendent or council, as applicable, by delivering written notice to the superintendent or council, or

(b) appeal the order to the tribunal.

(3) Within a reasonable time after receiving written notice referred to in subsection (2) (a), the superintendent or council, as applicable, must hold the required hearing and following the hearing must confirm, revoke or vary the order.

21. By way of an Instrument of Delegation dated March 7, 2016, the Commission has delegated to the Superintendent the power to issue orders under section 244 of the *Act* by way of summary procedure under section 238.

Application of the legislative scheme to the product offered

22. In its January 4, 2016 correspondence, BICO did not dispute that the “legal protect” and “trial protect” products are insurance. In addition, BICO did not explain how BICO is exempt from authorization in British Columbia.
23. The Certificate of Indemnity in substance reads like a contract of insurance as defined under the IA:
- (a) It contains language, and terms that are characteristic of a typical insurance policy. These include:
 - i. Product Title – “Certificate of Indemnity”;
 - ii. Definitions;
 - iii. Declarations;
 - iv. Time period and indemnity fee amount (similar to a premium);
 - v. Effective agreement commence date; and
 - vi. Requests for payment are referred to as claims and claim approvals.
 - (b) It refers to the company as the “Indemnitor” and outlines the obligations it has toward the person involved in action.
 - (c) It describes the nature of the coverage and provides a detailed list of circumstances in which the indemnity protection becomes void. The indemnity is provided upon the happening of a loss – the incurrence of a costs award or unreimbursed expenses.
 - (d) The LCP product’s only “service” or “good” offered or provided is an indemnification. The indemnification is not ancillary to any other promise, service or good.
24. BICO states on its website that a key difference between LCP and insurance is that LCP maintains solicitor and client privilege. No other clear difference between LCP and insurance is identified.
25. BICO states on its website that “it is not designed to be a regulated insurance product” but does not outright claim that it is not insurance. Furthermore, on its website, BICO refers to being in partnership with AMTrust Europe:

“BICO has a strategic relationship with AmTrust Europe, a wholly owned subsidiary of AmTrust Financial Services, Inc. ("AmTrust"), a company with a market capitalization of \$5 billion USD. Through bespoke insurance

arrangements, AmTrust provides financial support, advice and assistance to BICO, enabling BICO to leverage the financial strength of AmTrust Europe to reinforce its financial commitments to its clients and support the growth of its legal cost protection business in Canada.”

26. It appears that AmTrust Financial Services Inc. may be related to an insurer which is authorized in Ireland. However, no AmTrust named entity is authorized to conduct insurance business in British Columbia. The actual description of the partnership between BICO and AmTrust is not described other than as a “strategic relationship”. This could be confusing to the consumer and may lead them to think that AmTrust is the insurer involved. However, based on my review of the product material, there is no contractual relationship between BICO and AmTrust. Consumers likely have no recourse to an authorized insurer.
27. The *Act* definition of “insurance business” and the *Insurance Act* definition of “insurance” both refer to a party agreeing to indemnify another against loss or liability for loss. BICO itself refers to its product as an “indemnity” throughout the LCP contract.
28. Common usage and legal usage definitions are very similar. The *Oxford English Dictionary*, online edition, defines “indemnity” and “indemnify” as:
- indemnity:*
1. *Security or protection against contingent hurt, damages, or loss; safety;*
...
3. *a. Compensation for loss or damage incurred; indemnification;*
b. a sum paid by way of compensation
- indemnify:*
1. *To preserve, protect, or keep free from, secure against (any hurt, harm, or loss) to give an indemnity to;*
2. *a. To compensate (a person, etc.) for loss suffered, expenses incurred, etc.*
...
29. The *Dictionary of Canadian Law*, Third Edition has definitions of indemnify, indemnity, and indemnity insurance, all of which speak to obligations to protect from loss by way of repayment or otherwise making the person who is indemnified whole. The dictionary cites from *Arklie v. Haskall* (1986), 33 D.L.R. (4th) 458, in which the British Columbia Court of Appeal states “...The concept of indemnity has central to it the idea of compensation, of making good, or paying moneys to a person, to reimburse them for losses sustained...”.
30. From the online version of Black’s Law Dictionary:
- (a) “An indemnity is a collateral contract or assurance, by which one person engages to secure another against an anticipated loss or prevent him from being indemnified by the legal consequences of an act or forbearance on the part of the parties or some third person.”

- (b) “What is an indemnity contract? A contract that repays the [insured] losses back to them. Also called indemnity.”
31. BICO, through the LCP product, undertakes to make a party to litigation (or their legal counsel) whole or whole up to a certain amount, for losses incurred by way of the occurrence of a court order for costs or unreimbursed legal expenses.
32. There are legal expense insurance products available in British Columbia offered by authorized insurance companies. From my review of a legal expenses insurance policy available in British Columbia, at least one insurance company offers a product which provides nearly identical coverage to the BICO LCP product.
33. In pretext emails sent to BICO, where staff referred to their search for insurance, BICO did not correct staff that the company is not an insurance company or that the product it is offering is not insurance.
34. Based on the content of the promises made under the LCP products and the similarity of the products and the information collected from █████, I agree with staff that BICO’s LCP Certificate of Indemnity is a contract of insurance and that BICO is conducting insurance business. The product falls within the class of insurance “legal expenses insurance” as defined in the Classes of Insurance Regulation.
35. I find this because:
- (a) BICO is accepting a risk that the payout will be greater than the fee or premium charged.
 - (b) BICO is indemnifying, as that term is commonly used and as referenced explicitly by BICO, an individual or law firm as the contract promises to make the party whole (or partially whole) for losses incurred.
 - (c) The contract used by BICO provides that BICO will pay on a specific happening or occurrence, for example, when a court decision is made with respect to costs against an insured, that costs awarded are inadequate, or that a litigant will be out of pocket or liable for their own expenses.
 - (d) BICO issues, delivers, and accepts payment for a contract of insurance.
 - (e) A fee or premium is payable (while I note that under the British Columbia legislative scheme no premiums or fees are required to fall within the definitions of insurance or insurance business).
 - (f) The indemnification provided by BICO is not ancillary to any other promise, product or service offered. It is the very substance or essence of the contract.
36. Based on the advertisement found in the Advocate, a British Columbia magazine, I further find that BICO is soliciting insurance and accepting risk from British Columbia residents and lawyers. By engaging in these activities, BICO is conducting insurance business in British Columbia without authorization in breach of section 75 of the *Act*.

37. Based on the information obtained from the [REDACTED] BICO has sold its insurance product in British Columbia, to a British Columbia resident, which insures against risk located in British Columbia.
38. Based on the evidence, facts, and reasoning above, I find that BICO is not authorized as an insurance company in British Columbia but is soliciting for and offering legal expenses insurance to individual consumers, lawyers, and law firms in British Columbia. This is in contravention of section 75 of the *Act*.
39. BICO is an active market participant in the insurance industry and sells their product in British Columbia through a representative located in British Columbia.
40. There appears to be a common understanding from some in the public, including lawyers and judges, that BICO's contracts are insurance policies.
41. BICO is not subject to any regulatory supervision in British Columbia, and likely not anywhere else in Canada. Because BICO is not regulated as an insurance company, it is not subject to any licensing suitability rigor, ongoing capital requirements, or regulatory oversight. This means consumers may become vulnerable if BICO is unable to fulfill its financial obligations. Consumers also have no recourse to the Property and Casualty Insurance Compensation Corporation fund.
42. Absence of market conduct oversight and control from a regulatory body in the distribution of BICO's insurance products means there is no protection for certificate holders if BICO is operating in a way that is harmful to the public.
43. The unauthorized operation of BICO is recent and ongoing. Its insurance activities are non-compliant with the *Act* and pose a risk to the public.
44. I agree with staff's estimate that four witnesses would be required for a hearing and that the ability to schedule witnesses including some who may be from out of province, counsel, and the hearing officer would likely mean that a hearing would take approximately four days and likely not take place until at least four months from now. I find that the length of time that would be required to hold a hearing would be detrimental to the due administration of the *Act*.

WHEREAS the Financial Institutions Commission has delegated to the Superintendent certain powers and duties under section 244 of the *Act* in the Instrument of Delegation dated March 7, 2016;

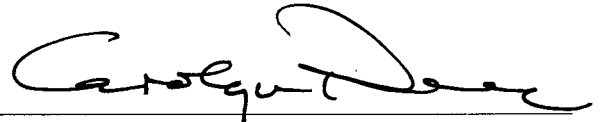
NOW THEREFORE I order pursuant to Sections 244(2)(a), (e)(ii), and (f), and 238 of the *Act* that:

- 1) BridgePoint Indemnity Company (Canada) Inc. immediately cease conducting insurance business in the Province of British Columbia, including the advertising, soliciting, offering, sale, and adjusting of legal expenses insurance under the product names Legal Cost Protection, LegalProtect, and Trial Protect;

- 2) BridgePoint Indemnity Company (Canada) Inc. provide the Superintendent with a copy of every contract issued by it which insures risk located in British Columbia and is currently in force, within 10 days of the issuance of this Order; and
- 3) BridgePoint Indemnity Company (Canada) Inc. arrange for the assumption of all current contracts insuring risk located in British Columbia by an authorized insurance company, at the sole expense of BridgePoint Indemnity Company (Canada) Inc. and without penalty to any insured under those contracts, within 90 days of the date of this Order; or otherwise deal with current contracts in a manner satisfactory to the Superintendent.

TAKE NOTICE that BRIDGEPOINT INDEMNITY COMPANY (CANADA) INC. may request a hearing before the Superintendent under section 238(2)(a) of the *Act* or appeal to the Financial Services Tribunal under section 238(2)(b) of the *Act*.

Dated at the City of Vancouver,
Province of British Columbia
this 30 day of June, 2016.



Carolyn Rogers
Superintendent of Financial Institutions
Province of British Columbia